

This rule was adopted on December 30, 2004, and becomes effective January 30, 2005. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 99-11-106, filed 5/19/99, effective 6/19/99)

WAC 458-20-263 Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption. (1) **Introduction.** (~~This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal source of power. These exemptions expire on June 30, 2005.~~

(2) **Definitions.** ~~The following definitions apply to this section:~~

(a) ~~"Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using the wind, landfill gas, or solar energy as the principal source of power.~~

(i) ~~"Machinery and equipment," where solar energy is the principal source of power, includes, but is not limited to: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system.~~

(ii) ~~"Machinery and equipment," where wind is the principal source of power, includes, but is not limited to: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; control buildings; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system.~~

(iii) ~~"Machinery and equipment," where landfill gas is the principal source of power, includes, but is not limited to: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; control buildings; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system.~~

(iv) ~~"Machinery and equipment" does not include: The utility grid system and any tangible personal property used to connect electricity directly to consumers; hand tools; property with a useful life of less than one year; repair parts required to restore machinery and equipment to normal working order; replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and~~

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~~equipment; buildings; or building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.~~

~~(b) "Used directly" means the machinery and equipment provides any part of the process that captures the energy of the wind, landfill gas, or solar, converts that energy to electricity, and transforms or transmits that electricity for entry into electric transmission and distribution systems.~~

~~(c) "Installation charges" means sales of or charges made for labor and services rendered in respect to installing the machinery and equipment.~~

~~(i) Labor and services to install machinery and equipment includes both the charges for labor and charges for the rental of equipment with an operator.~~

~~(ii) Labor and services to install machinery and equipment does not include the rental of tangible personal property used by the buyer to install machinery and equipment. See WAC 458-20-211.~~

~~(3) **Retail sales tax exemption.** The retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating not less than two hundred kilowatts of electricity. Retail sales tax also does not apply to installation charges for this machinery and equipment. RCW 82.08.02567.~~

~~(a) The exemption is effective July 1, 1996, for machinery and equipment using wind and solar energy, and April 3, 1998, for machinery and equipment using landfill gas (chapter 309, Laws of 1998).~~

~~(b) Prior approval is not required from the department of revenue in order to claim the retail sales tax exemption. However, the buyer is required to provide the seller with an exemption certificate. The seller must retain a copy of the certificate to document the exemption.~~

~~The exemption certificate may be:~~

~~(i) Issued for each purchase; or~~

~~(ii) In blanket form certifying all future purchases as being exempt from sales and use tax. Blanket forms must be renewed every four years.~~

~~(c) This certificate should be in substantially the following form:~~

~~Sales and Use Tax Exemption Certificate for Wind, Landfill
Gas, or Solar Powered Electrical Generation Facilities~~

~~The buyer (user) certifies that the items listed below are~~

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~~machinery and equipment, or are labor and services rendered to install the machinery and equipment, used directly in generating electricity using the wind, landfill gas, or solar energy as the principal source of power at a facility capable of generating not less than two hundred kilowatts of electricity, and that such purchase is exempt from the retail sales tax under RCW 82.08.02567. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.~~

~~Buyer (User) UBI/Registration # _____~~

~~Name of Buyer (User) _____~~

~~Address of Buyer (User) _____~~

~~Seller UBA/Registration # _____~~

~~Name of Seller Date _____~~

~~Item or category of items _____~~

~~Buyer or Buyer's Agent~~

~~(Print) _____~~

~~Authorized signature Title _____~~

~~Date _____~~

~~(4) **Use tax.** The law provides a corresponding use tax exemption for the use of machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using wind, landfill gas, or solar energy as the principal source of power. RCW 82.12.02567. The use tax exemption is effective July 1, 1996, machinery and equipment, using wind and solar energy and April 3, 1998, for machinery and equipment using landfill gas (chapter 309, Laws of 1998).~~

~~(5) **Time of sale.** The existing rules pertaining to time and place of sale and when tax liability arises apply for purposes of whether a given transaction occurred on or after the effective date of the law. The effective date with respect to machinery and equipment used to generate electricity using wind or solar energy is July 1, 1996, and, machinery and equipment using landfill gas, April 3, 1998. See WAC 458-20-103, 458-20-178, and 458-20-197.~~

~~(a) In the case of an outright purchase of goods, the sale takes place when the goods are delivered to the buyer in this state. Thus, machinery and equipment delivered to the buyer on or after July 1, 1996, or April 3, 1998, respectively, can qualify for exemption, regardless of when the order for the goods was placed.~~

~~(b) If machinery and equipment is acquired without payment of retail sales tax, use tax is due at the time of first use. Thus, machinery and equipment for electricity generating facilities using wind or solar energy which is first put to use after July 1, 1996,~~

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~~can qualify for the exemption. See WAC 458-20-178.~~

~~(c) In the case of leases or rentals of tangible personal property, liability for sales tax arises as of the time the lease or rental payment falls due. Thus, in the case of leased machinery and equipment using landfill gas, rental payments that fall due on or after April 3, 1998, can qualify for exemption, regardless of when the lease was initiated.)) This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power. These exemptions expire June 30, 2009.~~

(2) Retail sales and use tax exemptions. The following exemptions apply for retail sales and use taxes.

(a) For periods before July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred kilowatts of electricity.

For this period, RCW 82.12.02567 provided a corresponding use tax exemption for the use of machinery and equipment for these purposes.

(b) Effective July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred watts of electricity. See RCW 82.08.02567.

For this period, RCW 82.12.02567 provides a corresponding use tax exemption for the use of machinery and equipment for these purposes, except that no use tax exemption existed with regard to fuel cells until June 10, 2004. Between July 1, 2001, and June 10, 2004, although the purchase of machinery and equipment used directly in generating electricity using fuel cells is exempt from sales tax, the purchaser owes use tax upon the first use in this state of the machinery and equipment.

(3) What is "machinery and equipment"? "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power.

A "support facility" is a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and

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necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.

"Machinery and equipment" does not include:

- (a) The utility grid system;
- (b) Hand-powered tools;
- (c) Property with a useful life of less than one year;
- (d) Repair parts required to restore machinery and equipment to normal working order;
- (e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;
- (f) Buildings; or
- (g) Building fixtures that:
 - (i) Are permanently affixed to and become a physical part of a building; but
 - (ii) Are not integral and necessary to the generation of electricity.

(4) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:

- (a) Capture the energy of fuel cells, the wind, landfill gas, or solar energy;
- (b) Convert that energy to electricity; or
- (c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(5) **Examples of qualifying machinery and equipment.** This subsection provides examples of machinery and equipment that is used directly in generating electricity and qualifies for the retail sales tax exemption provided by RCW 82.08.02567 and the use tax exemption provided by RCW 82.12.02567. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) Where solar energy is the principal source of power: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

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(b) Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(6) **Installation charges.** Retail sales and use taxes do not apply to installation charges for qualifying machinery and equipment. This includes charges for labor and services rendered to install the machinery and equipment. However, there is no exemption for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Nor is there an exemption for tangible personal property, such as a crane or forklift, used by the buyer to install qualifying machinery and equipment.

(7) **Required documentation.** The prior approval of the department of revenue is not required to claim the retail sales tax exemption. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.02567.

A blank exemption certificate can be obtained through the following means:

(a) From the department's internet website at <http://dor.wa.gov>;

(b) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(c) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.